IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

AMERICAN STATES INSURANCE CO.
Plaintiff

V. NO. 3:94CV179-B-A

THE ESTATE OF EFFIE NEIGHBORS, LESLIE LEATHERMAN d/b/a QUICK TUNE, INC., and TULLY McCRORY
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the plaintiff's motion for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

The defendant Leslie Leatherman owns and operates an automobile repair and service business known as Quick Tune in Tupelo, Mississippi, which specializes in oil changes, tune-ups, and minor automobile repairs. The defendant Tully McCrory is one of Leatherman's employees. As one of the benefits of employment with Quick Tune, employees are allowed to service their personal automobiles for free.

On October 12, 1994, McCrory asked Leatherman if he could leave work for a few minutes so as to drive down the street and pick up some maps of local public hunting land. When McCrory got in his personal automobile, which was parked in front of the shop, he decided to drive around behind the garage and top off his fluids before heading down the street to pick up the maps. As McCrory was backing up in the parking lot of Quick Tune, he ran over a

pedestrian, Effie Neighbors, which ultimately resulted in her death.

The Estate of Effie Neighbors[1] subsequently sued McCrory in the Circuit Court of Lee County, Mississippi. In its complaint, the Estate alleges that at the time of the accident, McCrory was acting within the scope of his employment with Quick Tune. American States Insurance Company, through which Quick Tune carried a garage operations liability policy, is currently defending the suit under a reservation of rights. American States has brought this declaratory judgment action to determine whether there is coverage under the policy.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden

[1] The Estate of Effie Neighbors is named as a defendant herein; however, the Estate has apparently done no more than file an answer to this action. The Estate has not filed a response to the plaintiff's motion for summary judgment.

is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

The American States policy states that it applies to bodily injuries arising from garage operations. The term "garage operations" is defined in the policy as the ownership, maintenance, or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. "Garage operations" includes the ownership, maintenance or use of covered autos, as well as all operations necessary or incidental to garage business. American States asserts that McCrory's operation of his personal vehicle was for the purpose of a personal errand, and was in no way related to garage business. Both McCrory and Leatherman have agreed through deposition testimony that McCrory was on a personal errand which did not concern garage business. Since McCrory was in his personal automobile, and his actions did not involve garage business, American States asserts that the policy

did not provide coverage. In support of their contention, American States cites several cases from outside of this jurisdiction, in which other courts, in interpreting similar garage operations policies, held that coverage did not exist for activities that did not involve garage business. See Renda v. Brown, 563 So. 2d 328 (La. Ct. App. 1990); Continental Ins. Co. v. Colston, 463 S.W.2d 461 (Tex. Ct. App. 1971); Pierson v. American Hardware Mut. Ins. Co., 107 S.E.2d 137 (N.C. 1959).

In response, McCrory and Leatherman simply assert that being allowed to service personal vehicles was a fringe benefit of employment, and therefore McCrory's actions were incidental to garage business. The defendants have failed to cite any cases to support this particular proposition, and the court finds it to be without merit. The insurance policy at issue was not intended to cover personal automobiles unless they were being used in furtherance of the garage business. Since McCrory's use of his automobile at the time of the accident was not intended to benefit Quick Tune, the court finds that the American States policy did not provide coverage for the claim brought on behalf of Effie Neighbors under the facts that gave rise to this unfortunate accident.

In Travelers Indem. Co. v. Nix, 644 F.2d 1130 (5th Cir. Unit B May 1981), the Fifth Circuit interpreted a similar garage operations policy to determine whether coverage existed for bodily injury arising out of a shooting on the garage premises. The Fifth Circuit found that the policy only provided coverage for liability arising out of the conduct of the business, or incidental to the

business. The court further found that the liability of the owner of the store, if any, arose out of a purely personal altercation which was unrelated to the operation of the business. The Fifth Circuit held that since the policy did not provide coverage for personal liability arising from personal matters, coverage did not exist. Id. at 1132.

In the present action, the court is faced with a similar set of facts, in which bodily injury occurring on the insured premises resulted from purely personal activities. Like the Fifth Circuit in Nix, this court finds that the American Estates policy did not provide coverage for potential liability arising out of personal matters which were unrelated to garage business.

CONCLUSION

For the aforementioned reasons, the court finds that the plaintiff's motion for summary judgment should be granted, and judgment entered for the plaintiff on the issue of policy coverage.

An order will issue accordingly.

THIS, the _____ day of December, 1995.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE